

Dr. Edward H. Salmon
Chairman
Jeremiah F. O'Connor
Commissioner
Carmen J. Armenti
Commissioner



STATE OF NEW JERSEY
Board of Regulatory Commissioners
Two Gateway Center
Newark, NJ 07102

ORIGINAL
FILE

Celeste Fasone
Director
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December 14, 1992

DEC 15 1992

VIA FEDERAL EXPRESS OVERNIGHT MAIL

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

DEC 15 1992

Hon. Donna R. Searcy, Secretary
Office of the Secretary
Federal Communications Commission
Washington, DC 20554

FCC - MAIL ROOM

Re: In The Matter Of

IMPLEMENTATION OF THE
CABLE TELEVISION CONSUMER
PROTECTION AND COMPETITION
ACT OF 1992

MM Docket No. 92-260

CABLE HOME WIRING

Dear Ms. Searcy:

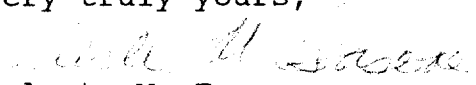
Enclosed please find an original and 12 copies of the **Comments/Reply Comments** of the State of New Jersey, Office of Cable Television for filing in the above matter. We have included copies for the Chairman, each Commissioner and Ms. Mary Beth Richards.

Kindly place the Office on the service list for this docket.

Please return one copy marked "Filed" in the enclosed addressed, stamped envelope.

Thank you for your consideration.

Very truly yours,


Celeste M. Fasone
Director

SR/et

Enclosures

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LISTADOCE

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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Implementation of the MM Docket No. 92-260
Cable Television Consumer
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Cable Home Wiring

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Comments/Reply Comments of the State of New Jersey
Office of Cable Television of
the Board of Regulatory Commissioners
on Notice of Proposed Rule Making

The State of New Jersey, Office of Cable Television
(hereinafter "Office"), of the Board of Regulatory
Commissioners (the "Board"), respectfully submits the
following comments/reply comments to the Notice of Proposed
Rule Making released by the Federal Communications Commission
(hereinafter "Commission") on November 6, 1992. The Board
has broad regulatory authority over cable television
operations in the State of New Jersey pursuant to N.J.S.A.
48:5A-1 et seq. and is the franchising authority for New
Jersey cable television systems. The Office has extensive
experience in the investigation and resolution of disputes
between cable operators and their subscribers including the
disposition and ownership of the internal cable television

wiring ("internal cable wiring") used for the delivery of cable television service.

The disposition of internal cable wiring has been a point of contention between cable operators, subscribers and competing service providers such as second cable franchisees and Satellite Master Antenna systems.¹ In addition, a growing number of cable subscribers in New Jersey have wired their own homes for the reception of cable programming. Because we anticipate an increase in both competition in the industry and in the number of homes wired by consumers, we agree with the Commission that it is appropriate to formulate a premises wiring rule.²

1 For brevity purposes we shall use the term "cable operator" to refer to all providers of cable television service.

2 While the Office is submitting these suggestions for the purpose of the drafting of a Federal Communications Commission rule, it is important to note that the Board has no definitive standard by which it decides home wiring ownership disputes. The standard the Board has used in the past regarding wiring ownership is that of a rebuttable presumption of ownership in favor of the incumbent cable operator. However, the presumption has been challenged in the Appellate Division of the state. In addition, the Board has recently issued a Notice of Pre-Proposal for a rule that would address the issue of premises wiring.

The disposition and ownership of wiring may soon become a more critical issue particularly in New Jersey where an accelerated fiber/video dialtone service plan is being pursued by a local exchange carrier (LEC). In addition, we believe that as more telecommunications services become available consumers may require different or unique wiring configurations, creating the potential for disputes regarding the ownership of internal cable wiring.

WIRING INTERNAL TO THE PREMISES

The Office, in submitting the comments/reply comments, is dealing exclusively with the portion of the wiring which runs from the attachment to the subscriber's premises to the terminal box converter unit or television inside a consumer's home. This is the portion of the cable service wiring that could serve as a permanent attachment to the subscriber's home. This wiring has the potential to function as an integral link to any multi-channel service provider. Additionally, any removal of the internal wiring could be disruptive to the homeowner and his property and could serve as a possible impediment to the delivery of competing services to the subscriber. For example, under the FCC video dialtone model, video suppliers might employ the common carrier service of an LEC, and possibly rely on the use of existing broadband wiring already existing in the home without the need to rewire. This is not to say that existing coaxial wiring will technically facilitate the delivery of all other services now and in the future. We comment on that more in this report.

We agree generally with many of the comments submitted by the New York State Commission on Cable Television which state or suggest that the cable operator has a continuing burden to render safe and adequate service over internal wiring regardless of ownership.

Due to the legal and technical requirements placed upon a cable operator it is essential that the cable operator be guaranteed access to and retain some control of all wiring during the time its service is being delivered. This is necessary to provide safe, adequate and proper service as defined under Federal, State and local laws. Premises wiring is noted to be a significant cause of subscriber service anomalies. To ensure the delivery of high quality service, a cable operator must have reasonable access to the premises wiring. Furthermore, wiring product and installation safety requirements regarding fire retardency, bonding and grounding and signal leakage identification/ correction are the clear responsibility of the cable operator. The operator's ability to ensure safety in this regard is a direct function of its access to premises wiring and its ability to require that the premises wiring to which it connects meets all applicable safety requirements.

Upon termination of service, the internal cable wiring currently is detached from the cable operator's system and lies unused until service is reconnected. It may be appropriate to design a home wiring rule that would consider the consumer's rights to acquire the premises wiring at the

time of disconnection, thereby affording the consumer the option of an alternative service provider without the impediment of rewiring the premises.

The Office believes that a rule providing for consumer ownership of internal wiring after termination of service would foster competition among multi-channel service providers. Consumer ownership could facilitate the transition of a subscriber to a competitive provider. Allowing a subscriber to own or acquire the existing wiring could allow the subscriber to avoid the disruption associated with the rewiring should the subscriber wish to subscribe to competing services such as wireless cable, cable overbuilders or SMATV companies, and possibly other service providers under video dialtone.

DISTINCTION OF WIRING BETWEEN DIFFERENT DWELLINGS AND COMMON AREAS

The Commission has asked for comments on whether the rule would need to be tailored to different settings such as single family dwellings, multiple unit dwellings and multiple building settings and whether a distinction should be made to cover common wiring within a multi dwelling unit building.

The Office agrees with the Commission that the rule should be tailored to distinguish between the different dwelling settings noted above. However, under certain circumstances, i.e. in the case of multi dwelling units, the potential for diverse wiring configurations make it

impracticable to limit a subscriber's acquisition to only that portion of the wiring within the individual dwelling unit. A concern regarding multi dwelling units is that wiring designed to service only a particular dwelling unit commonly extends beyond the confines of the particular dwelling and therefore, may be in a common area.

SUBSCRIBERS RIGHT TO ACQUIRE WIRING VS.

CABLE OPERATORS RIGHT OF ACCESS

In response to the Commission's request for comments on how to reconcile a subscriber's right to acquire wiring versus a cable operator's right of access to the building, the Office believes that the multi dwelling unit subscriber's acquisition of the wiring after termination will not impede the incumbent franchised operator's ability to provide service to the remainder of the building. An individual's right to acquire wiring would be limited to only the wiring which serves his unit. New service providers, like the existing providers, will need to negotiate access to the areas with the building owner. Once access to the common areas is granted, the new service provider may provide service through the use of a dwelling unit owner's acquired wiring after the termination of previous service. Exceptions would have to be carved into this rule. One example, where an exception would be necessary would be in older buildings with primitive, cascaded wiring designs where out right ownership by one owner could affect the rights of other owners. (i.e. Disconnection of one subscriber would shut down all circuits beyond it.) The rule must be drafted so that

the rights of all parties are protected while the cable operator is allowed to provide safe, adequate and proper service.

EXISTING AND FUTURE WIRING

The Commission requests comments on whether the home wiring rules would need to differentiate between existing and future cable home wiring installations, and also whether it is likely that subscribers or cable operators may want cable home wiring removed upon termination. The Office believes there should be no differentiation in the rule as it applies to existing and future wiring installations because the acquisition of wiring is to be determined after the termination of service. Since acquisition of wiring is pursued only after termination of service, the rule will only apply to existing wiring. However, we believe there should be some recognition that some new subscribers with no existing wiring may seek to install their own wiring in certain situations.

It has been our experience that consumer installed wiring is often of inferior quality in terms of materials and in the manner in which it is installed. Cable operators on the other hand must adhere to a host of technical requirements with which a consumer is unfamiliar. However, the Office believes that consumers should be allowed to perform the wiring of their dwellings prior to new service installations under conditions that would allow the cable

operator to meet all of its technical performance standards, safety requirements and signal leakage limitations in accordance with Federal, State and local laws.

REMOVAL OF WIRING

With regard to the removal of wiring, the Office believes that the majority of subscribers and operators will wish to keep the wiring in place. Since the internal wiring, will have little salvageable value to the operator, it is unlikely that the wiring will be removed in most cases.

TERMINATION OF SERVICE FOR NON-PAYMENT

The Commission has requested comments on how the rules should be tailored to address termination based on non-payment or for theft of service. The Office believes that while the same rules for legal subscribers should apply, the rules should provide for collection of any outstanding amount owed to the cable operator by the subscriber.

CHARGES TO SUBSCRIBERS FOR ACQUISITION

In response to the Commission's request for comments on whether and how limits should be set on the amount that can be charged to subscribers for the acquisition of their wiring and how to determine to what extent subscribers have in fact paid for such wiring at the time of installation, the Office believes that limits should be set on the amount subscribers

should be charged to acquire home wiring. A fair market value standard might apply which would reflect the use of this wiring asset as a transmission medium component, with its cost to subscribers not to exceed the operator's initial investment in materials. The operator should not be allowed to reap, through the transfer of ownership, any additional capitol beyond its initial investment in the drop material.

The true functional value of existing on-premises wiring is unclear. It is generally agreed that the wiring has continued value for the delivery of present and future cable service, and could be used for competing video services such as wireless cable. However, factors such as physical deterioration, compatibility with future transmission formats and other obsolescence considerations bring into question its true value as a mainstay component of future broadband delivery system. For instance, it is unclear whether existing coaxial cable will adequately transmit extremely wideband signals or the type of service envisioned under video dialtone. Therefore, any rule that facilitates subscriber acquisition of premises wiring should require disclosure to consumers that the value of acquiring internal wiring as an asset is unclear. The Office agrees with the comments of the New York State Commission on Cable Television that "The overriding emphasis then should be on a policy that does not mislead a terminating subscriber to assume that the internal wiring is necessarily an asset of value that will reduce the future cost of video services ..." (NYSCCT comments page 16, paragraph 25).

The Office also, in part, agrees with the comments of the New York Commission on Cable Television that "wiring may not be usable due to technological obsolescence, deterioration or a system performance upgrade." (NYSCCT comments, page 11, paragraph 17.)

OPERATOR'S RESPONSIBILITY FOR SIGNAL LEAKAGE

The Office agrees with the House Report's assertion that cable operators have the legal responsibility to prevent signal leakage. In light of the legal responsibility placed upon the cable operator, we believe that regardless of the ownership status of the wiring, the service provider must have, at a minimum, reasonable access to the internal wiring for both correction or prevention of signal leakage. It is clear based on the Office's experience investigating leakage and interference complaints, and through examination of both the FCC's Cumulative Leakage Index proceeding and its rules that the impact of signal leakage from subscriber premises wiring can be a key source of annoying interference, harmful interference and a potential threat to life and property. As utility easements convey a right of access for utilities on private property, private ownership of wiring must similarly contain an "easement-type" right of reasonable access for the cable operator.

The Office believes that in instances where the cable operator is unable to comply with Federal, State or local standards as a result of technical or safety problems caused

by the consumer owned wiring, the cable operator should have the right to either charge the consumer for the required repairs, allow the subscriber to remedy the condition, or curtail service after the subscriber is afforded a reasonable opportunity to cure the condition.

The Office believes that the Commission should establish guidelines or allow the franchising authority to establish guidelines which clarify the conditions under which cable operators may charge for maintenance or corrective service measures. These measures may be needed in order to make the consumer owned home wiring both compatible for interconnection with the cable operator's system and assure compliance with all applicable Federal, State and local guidelines. Further, because consumers are unfamiliar with all of the intricacies involved in the installation and repair of broadband wiring systems, some reasonable maintenance arrangement should be developed and offered to subscribers at regulated rates.

CONCLUSION

The Office believes that a rule designed to address the disposition of cable home wiring can be beneficial to consumers, cable operators and future multi-channel video service providers. We believe that the rule should be fashioned to foster competition in the industry without discouraging a cable operator's incentive to expand service into unwired areas.

The rule should foster the orderly introduction of wiring acquisition options for the video consumer without creating an environment where hazardous or unsafe home wiring is permitted. The Office fully agrees with the comments of the New York State Commission on Cable Television that "... sound public policy must continue to require the franchised cable operator (or other multi channel video programming distributor) to bear full responsibility for the safety and reliability of the internal wiring regardless of whether it can be said that such wiring is owned by the subscriber or the provider." (NYSCCT comments page 17, paragraph 27).. The FCC should promote a rule which, regardless of ownership, continues to recognize that the cable television operator does and will continue to have responsibility for the safe and adequate provision of service to subscribers.

Respectfully submitted,

OFFICE OF CABLE TELEVISION

By:

A handwritten signature in cursive script, appearing to read "Celeste M. Fasone", written over a horizontal line.

Celeste M. Fasone
Director

Dated: December 14, 1992